



ADMINISTRATION AND  
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE  
1950 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1950

MEMORANDUM FOR COMMITTEE MANAGEMENT SECRETARIAT  
GENERAL SERVICES ADMINISTRATION

SUBJECT: Committee Charter and Membership Balance Plan Consultation – *Judicial Proceedings Since Fiscal Year 2012 Amendments Panel*

The Department of Defense, pursuant to Section 576(a)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Public Law 112-239), ), as modified by section 1731(b) of the National Defense Authorization Act for Fiscal Year 2014 ("the FY 2014 NDAA") (Public Law 113-66), and in accordance with the Federal Advisory Committee Act of 1972, as amended, intends to establish the charter for the *Judicial Proceedings Since Fiscal Year 2012 Amendments Panel* (attached). The Panel will operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act, and governing federal regulations.

Prior to filing the Panel's charter with the Library of Congress and the appropriate congressional committees the Department of Defense respectfully requests that the Committee Management Secretariat review and approve the charter and membership balance plan (attached). The charter and membership balance plan has been reviewed and approved by the Office of the General Counsel for the Department of Defense.

If you should have any questions about this charter please contact my point of contact, Ms. Betty Mosher at 703-697-4555.

James D. Freeman II  
Advisory Committee Management  
Officer for the Department of Defense

2 Attachments

1. Charter
2. Membership Balance Plan

CHARTER  
Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

1. Committee's Official Designation: The committee shall be known as the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel ("the Judicial Proceedings Panel").
2. Authority: The Secretary of Defense, as required by section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 ("the FY 2013 NDAA") (Public Law 112-239), as modified by section 1731(b) of the National Defense Authorization Act for Fiscal Year 2014 ("the FY 2014 NDAA") (Public Law 113-66), and in accordance with the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established the Judicial Proceedings Panel.
3. Objectives and Scope of Activities: The Judicial Proceedings Panel will conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 ("the FY 2012 NDAA") (Public Law 112-81) for the purpose of developing recommendations for improvements to such proceedings.
4. Description of Duties: Section 576(d)(2) directs the Judicial Proceedings Panel to perform the following duties, with additional duties as added by section 1731(b)(1) of the FY 2014 NDAA:
  - a. Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the UCMJ that were enacted by section 541 of the FY 2012 NDAA.
  - b. Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases.
  - c. Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts.
  - d. Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report of the Judicial Proceedings Panel and the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available.
  - e. Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (article 32 of the UCMJ), and any instances in which prior sexual conduct was determined to be inadmissible.

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- f. Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case.
- g. Building on the data compiled as a result of the assessment conducted by the Response Systems to Adult Sexual Assault Crimes Panel (“the Response Systems Panel”), a Federal advisory committee established pursuant to section 576(a)(1) of the FY 2013 NDAA and in accordance with FACA, of the training level of military defense and trial counsel, assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases.
- h. Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by Section 573 of the FY 2013 NDAA.
- i. Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the UCMJ in certain sexual assault cases.
- j. Assess the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the UCMJ), to expressly cover a situation in which a person subject to the UCMJ commits a sexual act upon another person by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person.
- k. Assess the implementation and effect of the Special Victim’s Counsel for victims of sex-related offenses established by the Secretary of Defense on August 14, 2013 and codified in Section 1044e of title 10, United States Code, by the enactment of Section 1716 of the FY 2014 NDAA on December 26, 2013. The panel shall make such recommendations for modifications of section 1044e as the Judicial Proceedings Panel considers appropriate.
- l. Assess the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (article 56(b) of the UCMJ), as added by section 1705 of the FY 2014 NDAA, which requires at a minimum, that upon a finding of guilt for the offenses of rape, sexual assault, rape and sexual assault of a child, forcible sodomy, and attempts to commit such acts, the punishment include dismissal or dishonorable discharge, except as provided for by Article 60 of the UCMJ, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the UCMJ).
- m. Assess the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the UCMJ), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:
  - i. Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.
  - ii. Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the UCMJ).

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- iii. Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial.
- n. Consider such other matters and materials as the Judicial Proceedings Panel considers appropriate for purposes of the reports.

In conducting reviews and assessments and preparing reports, the Judicial Proceedings Panel may review, and incorporate as appropriate, the data and findings of applicable ongoing and completed studies. The Judicial Proceedings Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it considers appropriate to carry out its duties. Upon request by the Chair of the Judicial Proceedings Panel, a department or agency of the Federal Government shall provide information that the Judicial Proceedings Panel considers necessary to carry out its duties.

- 5. Agency or Official to Whom the Committee Reports: The Judicial Proceedings Panel shall provide its first report, including any proposals for legislative or administrative changes it considers appropriate, to the Secretary of Defense through the Department of Defense (DoD) General Counsel (GC), and the Committees on Armed Services of the Senate and the House of Representatives, not later than 180 days after its first meeting. The Judicial Proceedings Panel shall submit subsequent reports during fiscal years 2014 through 2017.
- 6. Support: The DoD, through the DoD Office of General Counsel (DoD OGC), the Washington Headquarters Services, and the Office of the Under Secretary of Defense for Personnel and Readiness, shall provide staffing and resources as deemed necessary for the performance of the Judicial Proceedings Panel's functions, and shall ensure compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 ("the Sunshine Act") (5 U.S.C. § 552b, as amended), governing federal statutes and regulations, and established DoD policies and procedures. Primary responsibility for such staffing and resourcing may not be assigned to the Sexual Assault Prevention and Response Office.
- 7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating cost, to include travel, meetings, and contract support, is approximately \$4,000,000 and 15 full-time equivalents.
- 8. Designated Federal Officer: The Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures.

In addition, the Judicial Proceedings Panel's DFO is required to be in attendance at all meetings of the Panel and its subcommittees for the entire duration of each and every meeting. However, in the absence of the DFO, the Alternate DFO, duly appointed to the Judicial Proceedings Panel according to DoD policies and procedures, shall attend the entire duration of the Judicial Proceedings Panel and any subcommittee meetings.

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The DFO, or the Alternate DFO, shall approve all of the meetings of the Judicial Proceedings Panel as called by the Chair; shall call all meetings of its subcommittees, in coordination with the Chair; prepare and approve all meeting agendas for the Judicial Proceedings Panel and any subcommittees; and adjourn any meeting when the DFO or the Alternate DFO determines adjournment to be in the public's interest or required by governing regulations or DoD policies and procedures.

9. Estimated Number and Frequency of Meetings: Consistent with sections 576(b)(6) and (7) of the FY 2013 NDAA, the Judicial Proceedings Panel shall meet at the call of the Chair, and the Chair shall call the first meeting of the Judicial Proceedings Panel not later than 60 days after the date of the appointment of all the members of the Judicial Proceedings Panel. The Judicial Proceedings Panel shall meet at a minimum once per year.
10. Duration: The Judicial Proceedings Panel shall remain in effect until terminated, as provided for and as required by section 576(c)(2)(C) of the FY 2013 NDAA; however, the charter is subject to renewal every two years.
11. Termination: According to section 576(c)(2)(C) of the FY 2013 NDAA, the Judicial Proceedings Panel shall terminate on September 30, 2017.
12. Membership and Designation: Pursuant to sections 576(b)(1)(B) and (b)(2), the Judicial Proceedings Panel shall be appointed by the Secretary of Defense and consist of five members, two of whom must have served on the Response Systems Panel.

The members shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Force, and offenses relating to rape, sexual assault, and other adult sexual assault crimes. The Chair shall be appointed by the Secretary of Defense from among the members of the Judicial Proceedings Panel.

Members shall be appointed for the life of the Judicial Proceedings Panel, subject to annual renewals. Any vacancy on the Judicial Proceedings Panel shall be filled in the same manner as the original appointment. Panel members shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. With the exception of reimbursement of official travel and per diem, Judicial Proceedings Panel members shall serve without compensation.

The DoD GC, according to DoD policies and procedures, may select experts and consultants as subject matter experts under the authority of 5 U.S.C. § 3109 to advise the Judicial Proceedings Panel or its subcommittees; these individuals do not count toward the Judicial Proceedings Panel's total membership nor do they have voting privileges. In addition, these subject matter experts shall not participate in any deliberations dealing with

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the substantive matters before the Judicial Proceedings Panel or its subcommittees nor shall they participate in any voting.

13. Subcommittees: The Department, when necessary and consistent with the Judicial Proceedings Panel's mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups to support the Judicial Proceedings Panel. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the DoD GC.

These subcommittees shall not work independently of the Judicial Proceedings Panel and shall report all of their recommendations and advice to the Judicial Proceedings Panel for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Judicial Proceedings Panel. No subcommittee or any of its members may update or report directly to the DoD or any Federal officers or employees.

The Secretary of Defense shall appoint subcommittee members even if the member in question is already a member of the Judicial Proceedings Panel. All subcommittee appointments shall be subject to annual renewal. Such individuals, if not full-time or part-time government personnel, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Those individuals who are full-time or permanent part-time Federal employees shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) as RGE members. Subcommittee members shall serve for the life of the subcommittee. With the exception of reimbursement of official travel and per diem, subcommittee members shall serve without compensation.

All subcommittees operate pursuant to the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

14. Recordkeeping: The records of the Judicial Proceedings Panel and its subcommittees shall be handled according to section 2, General Records Schedule 26, and appropriate Department of Defense policies and procedures. These records shall be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).
15. Filing Date: \_\_\_\_\_

Membership Balance Plan  
Judiciary Proceedings Since Fiscal Year 2012 Amendments Panel

Agency: Department of Defense

1. Authority: The Secretary of Defense, as required by section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (“FY 2013 NDAA”) (Public Law 112-239), as modified by section 1731(b) of the National Defense Authorization Act for Fiscal Year 2014 (“the FY 2014 NDAA”) (Public Law 113-66), and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (“the Judicial Proceedings Panel”).
2. Mission/Function: The Judicial Proceedings Panel will conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) for the purpose of developing recommendations for improvements to such proceedings.
3. Points of View: Pursuant to sections 576(b)(1)(B) and (b)(2), the Judicial Proceedings Panel shall be composed of five members appointed by the Secretary of Defense, two of whom must have served as panel members of the Response Systems to Adult Sexual Assault Crimes Panel (“the Response System Panel”).

Members of the Judicial Proceedings Panel shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes.

The Department of Defense (DoD), in selecting its potential candidates for the Judicial Proceedings Panel, reviews the educational, experiential, and professional credentials of individuals and bases its selection on this review and the subject matters to be handled by the Judicial Proceedings Panel. The DoD has found that viewing the complex issues facing the Judicial Proceedings Panel through an interdisciplinary advisory committee provides the DoD and, more importantly, the American public with a broader understanding of the issues on which to base subsequent policy decisions.

Each member, based upon his or her individual and professional experiences, provides his or her best judgment on the matters before the Judicial Proceedings Panel, and he or she does so without representing any particular point of view and in a manner that is free from conflict of interest. Members of the Judicial Proceedings Panel appointed by the Secretary of Defense, who are not full-time or permanent part-time Federal employees, shall be appointed as experts or consultants pursuant to 5 U.S.C § 3109 to serve as special government employee (SGE) members.

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The DoD, unless otherwise instructed by an Act of Congress or Presidential directive, does not use representative members on DoD established or supported advisory committees.

4. Other Balance Factors: None.
5. Candidate Identification Process: The DoD, in selecting potential candidates for the Judicial Proceedings Panel, reviews the educational and professional credentials of individuals with extensive professional experience in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes. Potential candidates will be identified by the DoD General Counsel (GC).

Once potential candidates are identified, the Designated Federal Officer, in consultation with the GC, will review the credentials of each individual and narrow the list of potential candidates. During the GC's review, the GC will strive to achieve a balance between the educational and professional credentials of the individual candidates and the subject matter that is to be reviewed by the Judicial Proceedings Panel.

Prior to nominating the potential candidates, the list of candidates will undergo a review by the DoD Office of General Counsel and the Office of the Advisory Committee Management Officer to ensure compliance with Federal and DoD governance requirements, including compliance with the Judicial Proceedings Panel's charter and membership balance plan. Following this review, the GC formally nominates the potential candidates to the Secretary of Defense for approval. Pursuant to DoD policy, only the Secretary of Defense or the Deputy Secretary of Defense can invite or approve the appointment of individuals to DoD established or supported advisory committees.

Following approval by the Secretary or Deputy Secretary of Defense, the candidates are required to complete the necessary appointment paperwork, to include meeting ethics requirements stipulated by the Office of Government Ethics for advisory committee members.

Members of the Judicial Proceedings Panel shall be appointed for the life of the Judicial Proceedings Panel, subject to annual renewal. All original appointments to the Judicial Proceedings Panel shall be made no later than 30 days before the termination of the Response Systems Panel. Any vacancy shall be filled in the same manner as the original appointment.

6. Subcommittee Balance: The Department, when necessary and consistent with the Judicial Proceedings Panel's mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups to support the Panel. The Secretary of Defense shall appoint subcommittee members even if the member in question is already a member of the Judicial Proceedings Panel. Such individuals, if not full-time or permanent part-time Federal officers or employees, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Those individuals who are full-time or permanent part-time Federal officers or employees, shall be appointed pursuant to



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41 C.F.R. § 102-3.130(a) to serve as regular government employee members. Subcommittee members, with the approval of the Secretary of Defense, may serve for the life of the subcommittee, subject to annual renewals. If the DoD does establish any subcommittees, vacancies will be filled in the same manner as the Secretary of Defense appointments are made as described above in Section 5.

7. Other: As nominees are considered for appointment to the Judicial Proceedings Panel, the DoD adheres to the Office of Management and Budget's Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions (76 FR 61756; October 5, 2011) and the rules and regulations issued by the Office of Government Ethics.

8. Date Prepared: